

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE:

B-217455

DATE: August 30, 1985**MATTER OF:**

Westinghouse Electric Corporation

DIGEST:

1. Determination to cancel an invitation for bids, in the form of a letter from the contracting officer to the protester, meets the requirement that the contracting officer make a specific, written determination to cancel, even though the determination is based on advice from technical and legal personnel. By signing the letter, the contracting officer has indicated that he adopts the recommendation to cancel.
2. Agency has a compelling reason to cancel an invitation for bids where the IFB is ambiguous regarding the type of equipment required and bidders are prejudiced by the ambiguous specification, since they were not bidding on a common basis. In addition, the government may be prejudiced by not obtaining the lowest price.

Westinghouse Electric Corporation protests the cancellation, after bid opening, of invitation for bids (IFB) No. DACW45-84-B-0012, issued by the Omaha District of the U.S. Army Corps of Engineers. The IFB covered voltage regulator-excitation equipment for hydroelectric generators at the Garrison Power Plant, Riverdale, North Dakota; the Corps canceled it after concluding that the specifications for one of the circuit breakers required to be included in the voltage regulator system were ambiguous. Westinghouse contends that the cancellation was improper because the contracting officer did not make the necessary determinations himself and because the specifications were not ambiguous.

We deny the protest.

The solicitation was issued on January 27, 1984, and at opening on February 29, four bidders responded as follows:

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<u>Bidder</u>	<u>Amount</u>
Westinghouse	\$667,014
General Electric	705,633
BBC Brown Boveri	759,800
Siemens-Allis	966,555

General Electric and Brown Boveri subsequently protested to the agency, questioning the responsiveness of the Westinghouse bid. They contended, among other things, that Westinghouse had not proposed a direct current circuit breaker to protect the main generator field and connected equipment from overvoltages, as required by the IFB. Instead, Westinghouse proposed using alternating current, solid state circuitry for this purpose. General Electric asserted that if the IFB had permitted, it would have proposed the same protective circuitry at a price \$50,000 less than it actually bid. In a memo dated May 16, however, the contracting officer determined that Westinghouse's bid was responsive and, specifically, that either the alternating current circuitry proposed by Westinghouse or the direct current circuit breaker proposed by General Electric and the other two bidders met specifications. Responding to supplemental protests from General Electric and Brown Boveri, the contracting officer reaffirmed this view on August 8.

The Corps' technical personnel, however, concluded that the specifications were ambiguous as to whether a direct current circuit breaker was required and that, because of this defect, bidders had not competed equally. On September 26, the Electrical and Mechanical Branch of the Corps' Engineering Division therefore recommended cancellation of the IFB.

Relying on this technical review, on October 12 the Corps' Chief Counsel confirmed that the specifications were ambiguous. Even though the minimum needs of the government would be met by the equipment offered by Westinghouse, the Chief Counsel determined that award would be prejudicial to the other bidders and recommended cancellation and resolicitation. After reviewing Westinghouse's response to the recommendation, and after the Electrical and Mechanical Branch reaffirmed its opinion, the Chief Counsel repeated his recommendation on December 11. The Corps took no further action until, in a letter dated April 29, 1985, the contracting officer informed Westinghouse of the decision to cancel the IFB and resolicit.

Westinghouse first protests that the cancellation was not properly authorized. Under the Defense Acquisition Regulation (DAR), § 2-404.1(b), reprinted in 32 C.F.R. Pts. 1-39 (1984), a determination to cancel an IFB must be made by the contracting officer in writing.^{1/} In this case, the April 26 letter to Westinghouse was signed by the Deputy District Engineer, whom the agency identifies as the contracting officer. The letter stated that it had been determined necessary to cancel the IFB because the specifications were considered to be defective. Westinghouse argues that this document does not represent a determination by the contracting officer, but rather refers to earlier determinations by technical personnel and the Chief Counsel.

We find that although the letter states its conclusions in the passive voice, it was issued and signed by the contracting officer under his authority to cancel IFBs under certain conditions. We have no reason to believe that the contracting officer did not independently adopt the recommendations of the technical and legal personnel who reviewed the IFB. We therefore find that the letter meets the requirement for a written determination by the contracting officer. We deny the protest on this ground.

Westinghouse next protests that the Corps lacked a compelling reason to cancel the solicitation, since the specifications were not ambiguous and the equipment offered by Westinghouse met the needs of the agency. In this connection, Westinghouse relies on discussions of the specifications in the contracting officer's reports on the General Electric and Brown Boveri protests noted above.

The Corp responds that the ambiguity exists and that it is the result of the Omaha District's having omitted a sentence from a "guide specification," used by the Corps as an aid to drafting specifications for the purchase of voltage regulator-excitation equipment. Paragraph 3-2.3.9 of the IFB provides:

^{1/} In its protest letter, Westinghouse refers to provisions of the Federal Acquisition Regulation (FAR), 48 C.F.R. Ch. 1 (1984), and the Department of Defense FAR Supplement, 48 C.F.R. Ch. 2. Because the solicitation in this case was issued before the April 1, 1984 effective date of the FAR, the Defense Acquisition Regulation is applicable.

"Upon the occasion of any trouble requiring shutdown and removal from service of the generator, the excitation system shall be deenergized. The operation shall include interrupting all sources of generator field current. Circuitry shall be provided for protection of generator fields and connected excitation system components from over-voltages due to unusual operating conditions."

In the guide specification, this requirement was modified by a provision requiring the contractor to furnish and mount, in an approved manner, particular equipment, including

"[an] air circuit breaker conforming to the requirements of NEMA [National Electrical Manufacturers Association] publication No. SG3. . . . In addition, a main generator field air circuit breaker may be furnished to provide main generator field protection in lieu of circuitry described in [3-2.3.9] above. The main generator field contactor or circuit breaker, field discharge contact, and resistor shall conform to ANSI [American National Standards Institute] Standard C37.18." (Emphasis added.)

The procuring office deleted the underlined sentence when inserting the guide specification provision in the IFB as paragraph 3-4.2(3). According to the Corps, without the deleted sentence, the last sentence of the paragraph can be understood to require a direct current circuit breaker to protect the main generator field. In contrast, the preceding, quoted paragraph requires the contractor to furnish "circuitry" to protect the main generator field, and is not restricted to the use of circuit breakers.

The Corps points to other language in the IFB that supports its conclusion that the specifications were ambiguous. For example, paragraph 3-8.1(1)(b) lists as a required spare part a "main field breaker if furnished," implying that use of a circuit breaker is optional. Drawings included in the IFB, however, depict a direct current field contactor and state that all devices shown shall be furnished by the contractor, implying that it is required.

We agree with the Corps that the specifications concerning the circuit breaker were ambiguous, i.e., subject to more than one reasonable interpretation. See Wheatley Associates, B-209092, May 17, 1983, 83-1 CPD ¶ 522. General Electric's interpretation of the IFB to require a direct current circuit breaker was not unreasonable. The last sentence of paragraph 3-4.2(3), quoted above, requires "the" main generator field circuit breaker to conform to ANSI standards, without indicating that the use of a circuit breaker to protect the generator field is optional. Moreover, according to the Army, ANSI Standard C37.18 requires a direct current circuit breaker. On the other hand, Westinghouse's view that solid state circuitry may be substituted is supported by paragraph 3-2.3.9 and by other provisions of the IFB. The question therefore is whether the ambiguity was sufficient to justify cancellation after bid opening, as the Corps maintains.

Because of the potential adverse impact on the competitive bidding system of canceling an IFB after bid prices have been exposed, contracting officials must have a compelling reason to do so. DAR, § 2-404.1(a). Contracting officials have broad discretion to decide whether or not compelling circumstances for cancellation exist, and our review is limited to considering the reasonableness of the exercise of that discretion. Professional Carpet Service, B-212442, et al., Oct. 24, 1983, 83-2 CPD ¶ 483. Inadequate or ambiguous specifications are among the reasons listed in DAR § 2-404.1(b) that may justify cancellation after opening. However, the use of such deficient specifications is not in and of itself justification where an award under the solicitation as issued would serve the actual needs of the government and would not prejudice the other bidders. See Power Equipment Inc., B-213428.3, Oct. 22, 1984, 84-2 CPD ¶ 427; Hydro Power Equipment Co., Inc., B-205263, May 17, 1982, 82-1 CPD ¶ 466.

In this case, although the award to Westinghouse would serve the government's needs, we believe that the Corps reasonably concluded that it would be prejudicial to the other bidders. It is a basic principle of federal procurement law that specifications must be sufficiently definite and free from ambiguity so as to permit competition on a common basis. Harvey Bell, B-190073, Nov. 23, 1977, 77-2 CPD ¶ 405. Westinghouse has not questioned General Electric's contention that its bid would have been \$50,000 lower, and thus below Westinghouse's, had it proposed less expensive protective circuitry. Moreover, since

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the Corps did not obtain competitive bidding for its actual needs, it could not be assured that those needs would be met at the lowest price by making an award to Westinghouse.

Accordingly, we find no basis to object to the cancellation. We deny the protest.

for *Raymond Egan*
Harry R. Van Cleve
General Counsel